

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

<p>THERACARE OF NEW YORK, INC., and THERACARE MANAGED SERVICES, LLC,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;"><i>-against-</i></p> <p>11-20 46TH ROAD OWNER LLC,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p style="text-align: center;">Case No. 1:22-cv-00880</p> <p style="text-align: center;"><b><u>NOTICE OF REMOVAL</u></b></p>
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PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 and Local Civil Rule 81.1, Defendant 11-20 46<sup>th</sup> Road Owner LLC, by its undersigned attorneys, submits this Notice of Removal from New York State Supreme Court, Queens County, in which the above-captioned action is now pending, to the United States District Court for the Eastern District of New York, and in support of said Notice, states as follows:

**I. NATURE OF THE ACTION**

1. Plaintiffs TheraCare of New York, Inc. and TheraCare Managed Services, LLC commenced this action against Defendant 11-20 46<sup>th</sup> Road Owner LLC by the filing of a Verified Complaint in New York State Supreme Court, Queens County, on January 17, 2022.

2. The action was docketed in that court under Index No. 701058/2022.

3. Plaintiffs seek money damages of not less than \$1,468,449.41, in addition to other relief. Compl. at 16.

**II. PARTIES**

4. Plaintiff TheraCare of New York, Inc. pleads that it is a New York corporation with its principal place of business in New York State. Compl. ¶ 11.

5. Plaintiff TheraCare Managed Services, LLC pleads that it is a New York limited liability company, the sole member of which is TheraCare of New York, Inc. Compl. ¶ 12.

6. Defendant 11-20 46<sup>th</sup> Road Owner LLC is a Delaware limited liability company with two members: Simeon Derenshteyn and Elena Gilman.

7. Simeon Derenshteyn is domiciled in Colorado and resides primarily in Colorado. The only U.S. state in which he is a citizen is Colorado.

8. Elena Gilman is domiciled in Colorado and resides primarily in Colorado. The only U.S. state in which she is a citizen is Colorado.

### **III. BASIS FOR REMOVAL**

9. Plaintiffs' action is removable based on the presence of federal diversity jurisdiction.

10. Diversity of citizenship exists where the parties in interest are "citizens of different States" and the amount in controversy "exceeds the sum or value of \$75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a). Where these requirements are met, this Court has subject matter jurisdiction under section 1332(a).

11. Here, there is complete diversity between the parties. All Plaintiffs plead that they are citizens of New York only. *See* Compl. ¶¶ 11–12. The sole Defendant is not a citizen of New York.

12. The amount in controversy exceeds \$75,000, as Plaintiff seeks over \$1,468,449 in damages, exclusive of interest and costs. Compl. at 16.

#### **IV. DEFENDANT HAS COMPLIED WITH THE REMOVAL PROCEDURES**

13. The Eastern District of New York is the proper place to file this Notice of Removal because it is the district court embracing the place where the state court action was filed and is pending. 28 U.S.C. § 1441(a).

14. The removal of this action is timely under 28 U.S.C. § 1446(b). Defendant first received a copy of the Verified Complaint, which was “the initial pleading setting forth the claim for relief upon which such action or proceeding is based,” on January 18, 2022, less than 30 days ago.

15. Defendant was served with the Verified Complaint on January 18, 2022. Pursuant to 28 U.S.C. § 1446(a), the following documents are attached to this Notice: all proofs of process docketed in the state court action (**Exhibit 1**); all pleadings in the state court action (**Exhibit 2**). There have been no orders in the state court action.

16. Defendant will provide written notice of the filing of this Notice to Plaintiffs, and will file a copy of this Notice in the state court action, as required by 28 U.S.C. § 1446(d).

17. In filing this Notice, Defendant does not waive any defenses that may be available to it.

WHEREFORE, Defendant 11-20 46<sup>th</sup> Road Owner, LLC respectfully gives notice that the above-captioned action brought against it in New York State Supreme Court, Queens County, is hereby removed therefrom to proceed in this Court.

Dated: February 16, 2022

Respectfully submitted,

**GIBSON, DUNN & CRUTCHER LLP**

/s/ Shireen Barday

Shireen Barday

[sbarday@gibsondunn.com](mailto:sbarday@gibsondunn.com)

Paul J. Kremer

[pkremer@gibsondunn.com](mailto:pkremer@gibsondunn.com)

200 Park Avenue

New York, NY 10166-0193

(212) 351-4000

*Attorneys for Defendant*

*11-20 46th Road Owner LLC*